

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Petitions for Limited	)	
Waiver of Section 52.15(g)(2)(i)	)	
of the Commission's Rules Regarding	)	
Access to Numbering Resources	)	
_____	)	

**FURTHER COMMENTS OF  
VONAGE NETWORK INC.**

Vonage Network Inc. ("Vonage") submits these further comments in response to two recent submissions in this docket by Qwest Communications International Inc. ("Qwest"). First, Qwest, on behalf of its wireline and IP-Enabled Services operations, has petitioned for a limited waiver of 47 C.F.R. Section 52.15(g)(2)(i) of the Commission's rules. Second, Qwest filed comments opposing Vonage's *Emergency Request for Expedited Approval of Vonage's pending Petition for Limited Waiver*.<sup>1</sup>

As explained below, although both Vonage and Qwest should be granted waivers, there are some notable differences between their petitions. Like Vonage and other parties, Qwest seeks to receive direct assignment of numbering resources from the North American Numbering

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<sup>1</sup> See Vonage Emergency Request, *Vonage Holdings Corp. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, Petition for Limited Waiver, CC Docket No. 99-200 (filed May 26, 2005) ("*Emergency Request*").

Administrator (“NANPA”) and the Pooling Administrator (“PA”). Qwest’s request follows the Commission’s grant of similar relief to SBC Internet Services, Inc. (“SBC-IS”).<sup>2</sup>

Vonage and Qwest are differently situated in two respects. First, as a result of the Commission’s recent adoption of E911 rules for interconnected VoIP providers, Vonage has an urgent need for immediate access to numbering resources to protect the safety of over 750,000 existing customers. Second, unlike Qwest, Vonage is not affiliated with a dominant wireline carrier and therefore is not in a position to obtain preferential access to the wireline network. Although Vonage does not oppose Qwest’s petition, the Commission must ensure that Vonage and others are able to gain equivalent access to the network as that obtained by a Qwest-affiliated VoIP entity and on non-discriminatory terms and conditions.

**I. VONAGE IS NOT SEEKING NEW RELIEF IN ITS *EMERGENCY REQUEST***

As explained in detail in the *Emergency Request*, Vonage requires waiver in order to gain access to pseudo-ANI (“pANI”) numbering resources, a critical component to the E-911 solution that Vonage is working to deploy on a nationwide basis.<sup>3</sup> The Commission has ordered Vonage, along with all other interconnected Voice over Internet Protocol providers, to develop and implement access to E-911 for all customers within 120 days.<sup>4</sup> Due to the nomadic nature of Vonage’s service and the ability of Vonage customers to use telephone numbers from geographically distant area codes, the access to and use of pANI numbering resources is essential to implement an E911 solution.

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<sup>2</sup> See *Administration of the North American Numbering Plan*, Order, CC Docket 99-200, FCC 00-50 (rel. Feb. 1, 2005) (“*Waiver Order*”).

<sup>3</sup> See *Emergency Request*.

<sup>4</sup> See *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, WC Docket Nos. 04-35 & 05-196, FCC 05-116 (rel. June 3, 2005) (“*VoIP E-911 Order*”).

Vonage's need for relief from the Commission's numbering rules became acute when the Commission announced its adoption of the *VoIP E-911 Order*. Recognizing its need for access to pANI numbering resources, Vonage filed its *Emergency Request*. Qwest responded by suggesting that Vonage's *Emergency Request* is procedurally improper.<sup>5</sup> Specifically, Qwest alleges that Vonage is seeking new relief that was not part of its original request for limited waiver.<sup>6</sup> Qwest claims that in seeking conditions that vary from those set out in the *Waiver Order*, Vonage is not seeking expedited treatment of its pending waiver request but instead seeks new relief.<sup>7</sup>

The Commission made clear in its *VoIP E911 Order* that it was adopting an "aggressively short" deadline for E911 implementation, and that it was doing so because of urgent public safety concerns.<sup>8</sup> Qwest's attempt to impede Vonage's acquisition of pANI numbering resources is particularly egregious as Qwest has made clear on two separate occasions its unwillingness to provide such resources to Vonage.<sup>9</sup> Denying access to pANI numbering resources and manufacturing procedural arguments in an effort to frustrate Vonage's ability to obtain direct access to numbering resources is plainly anti-competitive behavior and

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<sup>5</sup> See *Qwest Communications International Inc.'s Response to Emergency Request for Expedited Approval of Vonage's Petition for Limited Waiver of Section 52.15(g)(2)(i)*, CC Docket No. 99-200 (filed June 6, 2005).

<sup>6</sup> See *id.* at 3.

<sup>7</sup> See *id.*

<sup>8</sup> *VoIP E-911 Order*, at ¶ 37.

<sup>9</sup> Vonage is actively involved in commercial negotiations with a number of parties including Qwest to develop and deploy an E-911 solution consistent with the Commission's *VoIP E-911 Order*. In the context of those negotiations, Vonage specifically discussed access to pANI numbering resources on May 19, 2005, with Qwest. Qwest replied that they would not provide Vonage with such access. On May 26, 2005, Vonage again inquired about receiving pANI numbering resources from Qwest and Qwest repeated its refusal.

demonstrates Qwest's desire to undermine the public safety goal of the Commission's *VoIP E-911 Order* as well as Vonage's efforts to comply with that order.

In any event, Vonage is not requesting new relief in its *Emergency Petition*. Vonage's *Emergency Petition* addresses only two conditions that the Commission imposed on SBC-IS in the *Waiver Order*: (1) facilities-readiness; and (2) the 30-days notice requirement to the Commission and state commissions.<sup>10</sup> Vonage made clear in its reply comments that VoIP providers without a LEC affiliate should be given additional flexibility in satisfying the facilities-readiness requirement.<sup>11</sup> Indeed, in adopting the facilities-readiness requirements in the *Waiver Order*, the Commission explicitly stated that the specific requirements adopted were imposed to protect against potential discriminatory treatment since SBC-IS is a LEC affiliate.<sup>12</sup> Thus, Vonage's request that the Commission provide it flexibility in meeting the facilities-readiness requirements is already part of the record and would merely reflect the reality of Vonage's status as an independent VoIP provider without the ability to engage in discriminatory practices since it is not a LEC affiliate.

With regard to the 30-day prior notice requirement, in its *Emergency Request*, Vonage suggests that the Commission either eliminate this requirement or, alternatively, accept the *Emergency Request* as notice to the Commission and state commissions that the Company intends to request numbering resources from the NANPA and the PA.<sup>13</sup> If the Commission were to accept the *Emergency Request* as notice, there would be no need to modify the 30-day notice requirement and thus the relief sought would be entirely consistent with Vonage's petition. Even

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<sup>10</sup> See *Emergency Request* at 8-9.

<sup>11</sup> Vonage Holdings Corp. Reply Comments, at 12-14 (filed Apr. 26, 2005).

<sup>12</sup> See *Waiver Order*, at ¶ 10.

<sup>13</sup> See *Emergency Request*, at 6.

if the Commission were to modify the notice requirement in light of the *VoIP E-911 Order*, this would simply evidence Commission recognition of the changed circumstances that have occurred subsequent to the *Waiver Order* and the urgency of implementing the E-911 services directed by the Commission in the *VoIP E-911 Order*. Indeed, SBC-IS previously recommended that the Commission eliminate or modify the 30-day notice requirement in comments filed in response to petitions for limited waiver filed by Vonage and other parties.<sup>14</sup> Accordingly, Qwest's allegations about the need for notice and comments are completely without merit.

**II. THE COMMISSION MUST REQUIRE QWEST TO COMPLY WITH THE SAME FACILITIES-READINESS REQUIREMENTS AS SBC-IS**

In granting SBC-IS' waiver request, the Commission adopted certain rules governing the manner in which SBC-IS could demonstrate facilities-readiness. SBC-IS could demonstrate compliance with the *Waiver Order* in one of two ways: (1) SBC-IS must submit a copy of an interconnection agreement; or (2) "evidence that [SBC-IS] has ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled services."<sup>15</sup> The Commission adopted these particular requirements to ensure that SBC Communications, Inc. and its affiliate SBC-IS did not engage in any discriminatory practices concerning network access.<sup>16</sup> The Commission must adopt similar protections with respect to Qwest.

Under the Telecommunications Act, regardless of the status of the entity that requires access to the network, LECs are bound by the same prohibitions against discriminatory practices. . The Commission must adopt safeguards to ensure unaffiliated VoIP providers have the same access to the necessary network elements as do VoIP providers affiliated with LECs. The

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<sup>14</sup> SBC Internet Services, Inc. Comments, at 5-6 (filed Apr. 11, 2005).

<sup>15</sup> See *Waiver Order*, at ¶ 10.

<sup>16</sup> See *id.*

Commission recognized this concern and adopted protections in the *Waiver Order*.<sup>17</sup>

Accordingly, in granting Qwest's limited petition for waiver, the Commission should adopt the same facilities-readiness requirements as it imposed on SBC-IS.

### **III. CONCLUSION**

Vonage highlights its need for the Commission to grant its pending limited waiver petition. The Commission has mandated that VoIP providers implement an E-911 solution according to an extremely aggressive timeline. In order to meet the obligations set out in the *VoIP E-911 Order*, Vonage requires that the Commission grant its petition for limited waiver as soon as possible and not subject the Company to facilities-readiness and notice requirements that will further delay the implementation of an E-911 solution by the Company.

In considering Qwest's petition for limited waiver, the Commission must impose the same facilities-readiness requirement as SBC-IS. In the *Waiver Order*, the Commission adopted a facilities-readiness requirement for the dual purpose of ensuring that SBC-IS would utilize numbering resources assigned to the Company and to safeguard against potential discriminatory conduct. The same concerns present themselves if the Commission were to grant Qwest's petition for limited waiver. Accordingly, Qwest must be subject to the same facilities-readiness requirements as SBC-IS.

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<sup>17</sup> Vonage previously submitted detailed comments on this specific issue. Rather than repeat past arguments, Vonage incorporates those comments into the record of this proceeding. See Vonage Holdings Corp. Reply Comments, at 12-15 (filed Apr. 26, 2005).

Respectfully submitted,

/s/

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